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UNITED STATES DISTRICT COURT

DISTRICT OF OREGON

UNITED STATES OF AMERICA

3:11-CR-00209-JO-1

v.

**GOVERNMENT'S SENTENCING
MEMORANDUM**

ALEKSEY ALEXANDER DZYUBA,

Sentencing: May 6, 2013

Defendant.

10:00 a.m.

The United States of America, by and through S. Amanda Marshall, United States Attorney for the District of Oregon, and Assistant United States Attorney Kathleen L. Bickers, submits the following memorandum in support of the government's position on sentencing.

GOVERNMENT RECOMMENDATION

On Monday, May 6, 2013, the court will sentence the defendant, pursuant to the court's judgment of guilty following trial to the court, for the charge of Distribution of Heroin Resulting in Death, in violation of 21 USC § 841 (a)(1) and (b)(1)(C) and 18 USC § 2, a Class A felony, that carries a mandatory minimum sentence of 20 years to life imprisonment, a \$1,000,000 fine, a \$100 fee assessment and for the charge of Distribution of Heroin , 21 USC § 841(a)(1) and

(b)(1)(C), a Class C felony that carries a maximum sentence of 20 years' imprisonment, a \$1,000,000 fine, and a \$100 fee assessment. The government relies on the factual record made at trial and the court's Findings of Fact and Conclusions of Law for purposes of the sentencing hearing.

RECOMMENDED SENTENCE

In consideration of all factors set forth in 18 USC § 3553(a), and the requirement that the court sentence the defendant to the mandatory minimum penalty of 20 years' imprisonment, the government recommends the defendant receive a sentence of 240 months, which is within the range specified in offense level 38, Criminal History Category I. The defendant twice delivered heroin, a drug he knew to have potentially deadly consequences to the 17 year-old victim Tovi Sinyayev and Tovi's sister. Although, the defendant's criminal history category score is technically low, the defendant has numerous older criminal convictions for possession of controlled substances, theft and burglary.¹ Reliable evidence developed at the overdose trial indicates the defendant was also heavily involved in a theft and return scheme at several stores. It would appear that the recent gap in the defendant's criminal history is more a matter of the failure of police detection rather than an indication the defendant had reverted to a crime free lifestyle prior to the new charges.

Level 38, Criminal History I, is the range found by the presentence writer to be the advisory guideline range based on the relevant conduct involved in the offense. The presentence writer concurs in the government's determination that the mandatory minimum sentence is also a

¹ Counsel for the government, as a former state prosecutor, successfully prosecuted the defendant by jury trial almost twenty years ago in 1994 for Possession of Opium.

reasonable sentence for this defendant's crime. The government anticipates that it will request at sentencing restitution for expenses associated with the death of Tovi Sinyayev to be included in the final judgment of conviction. However, the Sinyayev family has not yet forwarded that information to the government. In the event the government receives that information, it will be immediately forwarded to the defense counsel.

Respectfully submitted,

S. AMANDA MARSHALL
United States Attorney

s/Kathleen L. Bickers
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Assistant United States Attorney